CRAFT *v.* MOLONEY BELTING CO. et al.

June 10, 1915.

[85 S. E. 486.]

Pleading (§ 8*)—Conclusions—Malicious Prosecution—Declaration—Want of Probable Cause.—In an action for malicious prosecution, the declaration showed that plaintiff was convicted before the police justice, but that on appeal to the corporation court he was acquitted. To avoid the force of the disclosure on its face that he was found guilty by the police justice, it alleged that before such police justice defendants, by means of evidence which they knew to be false, caused him to be convicted, without alleging that defendants testified falsely or at all, or that they were even present at the trial, or that they suborned other persons to testify falsely and without showing what the false testimony was, or that it was material. Held, that the declaration pleaded merely a conclusion of law, and was insufficient, as a declaration must plead the facts constituting the cause of action, so that they may be understood by the party who is to answer them, by the jury, and by the court.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 12-28½, 68; Dec. Dig. § 8.* 11 Va.-W. Va. Enc. Dig. 243; 14 Va.-W. Va. Enc. Dig. 832; 15 Va.-W. Va. Enc. Dig. 810.]

Error to Law and Chancery Court of City of Norfolk.

Action by Luther Craft against the Moloney Belting Company and another. Judgment of dismissal, and plaintiff brings error. Affirmed.

J. Edward Cole and *Fred C. Abbott,* both of Norfolk, for plaintiff in error.

W. H. Venable and *R. E. Miller,* both of Norfolk, for defendants in error.

SOUTHERN RY. CO. *v.* SNOW.

June 10, 1915.

[85 S. E. 488.]

1. Master and Servant (§ 124, 293*)—Injury to Servant—Defective Appliances—Instructions.—In an action by station agent, a man about 45 years of age having an experience of about 11 years in the work, for injuries from a fall traceable to the fact that the nut came off of the bolt which held the tongue of a baggage truck in place, an instruction that an employer must use ordinary care to provide reasonably safe appliances and to keep them in a reasonably safe con-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

dition was misleading; the truck being a common appliance, the duty to inspect which rested on the employee rather than on the employer.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 235-242, 1148-1156, 1158-1160; Dec. Dig. § 124, 293.* 7 Va.-W. Va. Enc. Dig. 716; 14 Va.-W. Va. Enc. Dig. 563; 15 Va.-W. Va. Enc. Dig. 512.]

2. Master and Servant (§ 235*)—Injury to Servant—Defective Instrumentalities—Notice.—Where it appeared that a baggage truck was in a dilapidated condition, such condition was sufficient, of itself, to put plaintiff on notice that he should not use it without first determining that it could be used with safety.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 710-722; Dec. Dig. § 235.* 9 Va.-W. Va. Enc. Dig. 694; 14 Va.-W. Va. Enc. Dig. 693; 15 Va.-W. Va. Enc. Dig. 650.]

3. Master and Servant (§ 103*)—Defective Appliances—Duty to Inspect—Right to Delegate.—The duty of inspecting a baggage truck constituting a simple instrumentality and used at a railway station may be delegated to the station agent.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 175; Dec. Dig. § 103.* 9 Va.-W. Va. Enc. Dig. 694; 14 Va.-W. Va. Enc. Dig. 693; 15 Va.-W. Va. Enc. Dig. 650.]

4. Trial (§ 296*)—Injury to Servant—Defective Appliances—Instructions—Cure of Error.—In an employee's action for injuries from a defect in a simple instrumentality, an instruction that it was the employee's unassignable duty to use all ordinary care to provide reasonably safe appliances, being in irreconcilable conflict with an instruction that under the defendant's rules it was plaintiff's duty to make a reasonable inspection of the instrumentality, was not cured thereby.

[Ed. Note. For other cases, see Trial, Cent. Dig. §§ 705-713, 715, 716, 718; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 744; 14 Va.-W. Va. Eng. Dig. 566; 15 Va.-W. Va. Enc. Dig. 522.]

Error to Circuit Court, Culpeper County.

Action by W. H. Snow against the Southern Railway Company. From judgment for plaintiff, defendant brings error. Reversed.

Moore, Keith, McCandish & Hall and *John S. Barbour,* all of Fairfax, and *R. B. Tunstall,* of Norfolk, for plaintiff in error.

Grimsley & Miller, of Culpeper, and *E. E. Garrett,* of Leesburg, for defendant in error.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.